

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MICHAEL FOLEY,

Plaintiff(s),

v.

MICHELLE PONT, et al.,

Defendant(s).

Case No. 2:11-CV-1769 JCM (VCF)

ORDER

Presently before the court is a referral notice from the Ninth Circuit. (Doc. # 184).

Plaintiff sued numerous defendants, including family members and child protective services ("CPS") employees, for deprivations of his constitutional rights. (Doc. # 55). Plaintiff alleged that defendants conspired against him to remove his children from his custody following a CPS investigation. (Doc. # 55).

On November 3, 2011, plaintiff filed a motion for leave to proceed *in forma pauperis*. (Doc. # 1). On November 4, 2011, Magistrate Judge Ferenbach granted the motion allowing plaintiff to proceed *in forma pauperis*. (Doc. # 2).

On October 18, 2012, the court granted motions to dismiss a number of defendants with prejudice. (Doc. # 134). Plaintiff filed a motion to reconsider, (doc. # 136), which the court denied, (doc. # 160). Plaintiff then filed another motion to reconsider, (doc. # 161), which the court also denied, (doc. # 168).

On July 17, 2013, plaintiff attempted to appeal the court's order on his motion to reconsider. (Doc. # 169). The appeal was dismissed for lack of jurisdiction because the order was not final. (Doc. # 172).

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1 On July 9, 2014, the clerk's office provided notice to counsel pursuant to local rule 41-1  
 2 that if no action was taken in the case within 30 days, the court would dismiss the case for want  
 3 of prosecution. (Doc. # 178).

4 On August 13, 2014, plaintiff filed an *ex parte* "notice of intent to continue litigation,"  
 5 stating that he was incarcerated and thus unable to proceed against defendants due to his  
 6 confinement. (Doc. # 179).

7 On August 18, 2014, the court dismissed the case without prejudice for want of  
 8 prosecution. (Doc. # 180). On September 16, 2014, plaintiff appealed the order of dismissal.  
 9 (Doc. # 182).

10 On September 17, 2014, the Ninth Circuit referred this matter to the district court for the  
 11 limited purpose of determining whether *in forma pauperis* status should continue for plaintiff's  
 12 appeal. (Doc. # 184). Revocation of *in forma pauperis* status is appropriate where the district  
 13 court certifies that the appeal is frivolous or not taken in good faith. 28 U.S.C. § 1915(a)(3).<sup>1</sup>

14 The court finds that the appeal is not taken in good faith and that it is frivolous. This  
 15 court dismissed plaintiff's claims for want of prosecution. "Failure to follow a district court's  
 16 local rules is a proper ground for dismissal." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

17 Accordingly,

18 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, in response to the  
 19 Ninth Circuit's referral notice, (doc. # 184), the court certifies that the appeal is frivolous and not  
 20 taken in good faith.

21 DATED October 1, 2014.

22   
 23 UNITED STATES DISTRICT JUDGE

24  
 25  
 26  
 27 <sup>1</sup> The appellate court, however, may grant *in forma pauperis* status on appeal. See  
 28 *O'Neal v. Price*, 531 F.3d 1146, 1149 (9th Cir. 2008) ("[S]ubsections (a)(4) and (5) of Rule 24 of  
 the Federal Rules of Appellate Procedure give litigants a procedural route for challenging the  
 trial court's certification.").